

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

V.

VETERANS INDEPENDENT ENTERPRISES OF WASHINGTON, a Washington public benefit corporation (aka VETERANS WORKSHOP); ROSEMARY HIBBLER (aka ROSEMARY PARGOUD, ROSEMARY SMITH, AND ROSEMARY BARNES); DONALD J. HUTT; and GARY PETERSON.

Defendants.

The Plaintiff, State of Washington, by and through its attorneys: Attorney General Robert W. Ferguson, and Assistant Attorneys General Joshua Studor, Lynda Atkins, and Heidi Anderson, bring this action against the Defendants. The State alleges the following on information and belief:

I. INTRODUCTION

1.1 The nonprofit corporation Veterans Independent Enterprises of Washington (VIEW) represents to the public that it assists homeless veterans of the U.S. Armed Forces with transitional housing and employment. Its assertion may have been true in the past but, as a result

1 of the grossly negligent conduct of its board and purposeful misconduct by its operations
2 manager, VIEW currently fails to provide even basic services to its residents and employees.
3 Despite an agreement with the Department of Commerce, and representations made to the public,
4 VIEW provides less than a handful of its residential units to veterans and does not reserve its
5 employment positions for veterans in need of jobs. For the past several years VIEW has been
6 grossly mismanaged and its assets have been wasted.
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8 1.2 This lawsuit seeks court intervention to prevent VIEW from being further
9 diminished by its Board of Directors and preserve its remaining assets from further
10 misappropriation and waste. VIEW's situation is dire. VIEW faces eviction from its current
11 location for continually failing to pay rent. One of its residential properties faces foreclosure on
12 a loan that should never have been made. The corporation is embroiled in multiple lawsuits from
13 current and former contractors and employees. The Department of Commerce is publicly
14 considering a suit for breach of contract. VIEW has also lost its primary source of income,
15 thereby putting its future in jeopardy.
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17 1.3 Many of VIEW's challenges are attributable to Rosemary Hibbler. As the
18 operations manager, Hibbler has misappropriated untold thousands of dollars. She has forged
19 checks in her favor, initiated large transfers of funds into unknown bank accounts, failed to pay
20 contractors and vendors, withdrawn thousands from ATMs at casinos, and endorsed checks to
21 cash that collectively total more than \$160,000. Coupling Hibbler's misconduct with the Board
22 of Director's near total abdication of oversight has led to imminent disaster for a once-valuable
23 nonprofit that served the public interest.
24

II. PARTIES

Plaintiff

2.1 The Plaintiff is the Attorney General of the State of Washington.

Defendants

2.2 Defendant Veterans Independent Enterprises of Washington (VIEW), doing business as Veterans Workshop, is a Washington public benefit corporation originally incorporated in 1988, and a registered charitable organization. Because it is a corporation holding assets for a charitable purpose, it is also a charitable trust within the meaning of the Charitable Trust Act. RCW 11.110.020. Its Unified Business Identifier Number is 601 064 518, Charitable Organization Registration Number is 1106962, and Federal Employment Identification Number is 911398031. Its principal place of business as of the filing of this complaint is 6919 24th St. W., University Place, WA 98466.

2.3 Defendant Rosemary Hibbler, (Hibbler) also known as Rosemary Pargoud, Rosemary Smith, and Rosemary Barnes, is an unmarried individual residing in Tacoma, Washington, and, as of the filing of this complaint, serves as a governor/director of VIEW.

2.4 Defendant Donald J. Hutt (Hutt) is a married individual residing in Lakewood, Washington, and, as of the filing of this complaint, serves as president and chief executive officer of VIEW.

2.5 Defendant Gary Peterson (Peterson) is a married individual residing in Tacoma, Washington, and, as of the filing of this complaint, serves as a governor/director of VIEW.

III. STANDING, JURISDICTION, AND VENUE

3.1 The Attorney General files this Complaint pursuant to his authority under the Charitable Trust Act (RCW 11.110) (CTA), the Nonprofit Corporations Act (RCW 24.03) (NpCA), the Consumer Protection Act (RCW 19.86) (CPA), and the Charitable Solicitations Act (RCW 19.09) (CSA). The Attorney General has authority under RCW 11.110.120 to seek orders to secure proper administration of a trust. “[T]he Attorney General has the authority to represent the public interest in securing the enforcement of charitable trusts.” *Lundberg ex rel. Orient Found. v. Coleman*, 115 Wn. App. 172, 179, 60 P.3d 595 (2002). Additionally, the Attorney General “has standing to maintain an action against the trustees of a charitable trust.” *In Re Breast Cancer Prevention Fund*, 574 B.R. 193 (2017) (citing *State v. Taylor*, 58 Wn.2d 252, 261, 362 P.2d 247 (1961) (also involving a nonprofit corporation holding charitable assets)). Under the NpCA, the Attorney General has authority to seek to enjoin the corporation from performing unauthorized acts (RCW 24.03.040(3)), seek involuntary dissolution of a nonprofit corporation (RCW 24.03.250, RCW 24.03.271), and protect the public interest (*Lundberg*, 115 Wn. App. at 172). The Attorney General has authority under RCW 19.86.080 to seek orders to prevent and restrain violations of the CPA. The Attorney General also has authority under RCW 19.09.340 to seek orders to prevent and restrain violations of the CSA. Violations of the CSA are per se violations of the CPA. RCW 19.09.340.

3.2 This Court has personal jurisdiction over the defendants under RCW 19.86.080, RCW 19.09.340, RCW 24.03.040, and RCW 11.110.120. The defendants reside in the jurisdiction and submitted themselves to the jurisdiction of this Court by engaging in the conduct set forth in this Complaint in Pierce County and elsewhere in the State of Washington.

3.3 This Court has subject matter jurisdiction over this action pursuant to RCW 24.03.266, RCW 19.86.080, RCW 19.86.140, and RCW 11.110.120.

3.4 Venue is proper in Pierce County pursuant to RCW 4.12.020 and RCW 4.12.025, and Civil Rule 82 because the defendants transact business, reside, and provide housing and other services to consumers with addresses in Pierce County.

IV. FACTS

A. VIEW Began as a Valuable Public Benefit for Tacoma-Area Veterans.

4.1 VIEW incorporated in Washington State in 1988 as a nonprofit corporation with the purpose of providing unemployed veterans assistance dealing with what it referred to as the “symptoms of unemployment:” homelessness, poor physical and/or emotional health, and institutionalization. It promoted the use of “rehabilitation professionals” to restore veterans to “a productive status.”

4.2 In 1990 it received the designation of public benefit corporation after receiving its IRS Section 501(c)(3) status.

4.3 A decade later, on September 20, 2000, VIEW directors Hutt, Peterson, and six others amended the Articles of Incorporation. First, they revised the corporation's charitable purpose: "To offer Veterans life-changing opportunities through transitional housing and work, life skills and diverse support services" and conduct any other lawful activities in furtherance of that purpose. Second—important to the State's lawsuit—VIEW revised its winding-up clause to allow assets from any dissolution to be transferred to any Section 501(c)(3) organization with a similar mission. Third, they mandated that the corporation would have "not less than six (6) nor

1 more than ten (10)" directors. On information and belief, the September 20, 2000, amended
2 articles of incorporation still govern VIEW's operations.

3 4.4 On information and belief, VIEW's bylaws operational at the times relevant to
4 this complaint, were adopted in 2005 and require a quorum of a majority of directors to conduct
5 business.

6 4.5 On or about April 13, 1992, the president of VIEW executed a Housing
7 Assistance Program Agreement (Contract Number 2-92-410-18A), by and between VIEW and
8 the Department of Commerce (fka the Washington Department of Community Development)
9 (the "HAP Contract"). As outlined in the HAP Contract, the program's stated purpose was to
10 "assist low and very low-income citizens in meeting their basic housing needs."

11 4.6 Pursuant to the HAP Contract, VIEW received funds from the Washington
12 Department of Commerce through its Housing Assistance Program (HAP) to purchase four
13 properties: 3406 S. Thompson, Tacoma, WA 98408; 1924 S. M Street, Tacoma, WA 98405;
14 3019-3021 N. 8th Street, Tacoma, WA 98406; and 4320 N. 27th Street, Tacoma, WA 98406
15 (collectively, the "VIEW Real Properties").

16 4.7 To secure performance of the HAP Contract, VIEW granted the Department of
17 Commerce a first-position Deed of Trust on each of the four VIEW Real Properties. *Inter alia*,
18 the deed required VIEW to maintain the VIEW Real Properties in good condition, keep each
19 parcel of real property clear of other encumbrances, and use the VIEW Real Properties as
20 outlined in the HAP Contract.

21 4.8 Per the HAP Contract, VIEW agreed to provide housing for 50 years to
22 individuals who have incomes that do not exceed 50% of the median income for the project area
23

1 (i.e. the Tacoma metro area). The HAP Contract required that the properties were to "provide
2 (17) units of transitional housing and appropriate services to disabled homeless, disabled
3 veterans in Tacoma, Washington (sic)." Six of the units would serve "people with incomes at or
4 below 30% of the median income." VIEW could charge rent but the amount charged could not
5 exceed 30% of the tenant's income. In return, the HAP Contract provided for a secured, zero
6 interest loan repayable only upon the sale or change of use of the subject properties.
7

8 4.9 In addition to providing stable, transitional housing for in-need veterans and other
9 members of the Pierce County community, VIEW created a work program to provide entry-level
10 positions to low-income veterans in need of employment. Frequently, individuals employed by
11 VIEW were also tenants in VIEW's low-income housing units.

12 4.10 To provide work opportunities, VIEW contracted with various for-profit entities.
13 For example, VIEW contracted with Boeing to refurbish respirators used in its manufacturing
14 plants. VIEW then paid its employees an hourly wage to perform labor under the contract.
15

16 4.11 In about 1994, VIEW moved into a workshop space at 4630 16th St. E, in Fife,
17 Washington (the "Fife Workshop"). The Fife Workshop provided both space for VIEW
18 employees to perform the work and offices for VIEW's management and administration.
19

20 4.12 By 2000, VIEW had established itself as a reliable resource for at-need veterans
21 in the Tacoma area.

22 **B. VIEW Declines Under Rosemary Hibbler's Management.**

23 4.13 Sometime between 2010 and 2014, VIEW began suffering from significant
24 neglect and mismanagement. The Board of Directors, which previously had as many as 10
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1 directors, dwindled to two – Defendants Hutt and Peterson – and the corporation stopped holding
2 regular board meetings.

3 4.14 Financial troubles also arose. VIEW started paying its employees late and,
4 sometimes, not at all. Rent and utility bills started going unpaid. It operated without a formal
5 budget for years and started using a factoring company to make payroll.
6

7 4.15 VIEW's first significant legal problems developed after it came to light that it had
8 not been paying its employees Washington's minimum wage. The Department of Labor and
9 Industries (LNI) intervened in 2015 and required that VIEW pay its employees minimum wage
10 and pay back wages to the LNI claimants.

11 4.16 In addition to LNI, the Internal Revenue Service (IRS) took action against VIEW
12 for not paying payroll taxes.
13

14 4.17 In 2014, Defendant Hibbler joined VIEW; first as a volunteer grant writer, then
15 as a paid contract bookkeeper. In November 2015, VIEW's directors, including Hutt and
16 Peterson, hired Hibbler full-time to manage its day-to-day operations. Her duties included
17 bookkeeping, human resources, marketing, compliance monitoring, driving, and general work
18 in the warehouse.

19 4.18 Prior to hiring Hibbler in November 2015, the Board knew she had felony
20 convictions and was being sued by her prior employer. However, the Board did not do a
21 comprehensive background check, nor did they fully inquire into the nature of her convictions.
22 In addition, the Board did not contact prior employers to inquire about her history. Had the Board
23 performed a reasonable inquiry about the person it was about to put in charge of the corporation's
24 finances, it would have learned that, at the time she was hired Hibbler had 10 felony convictions
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1 for theft and forgery between 2007 and 2011; had many civil judgments against her; had
2 previously filed for bankruptcy protection; and had her employment terminated multiple times
3 – including once immediately before coming to VIEW – based on allegations that she
4 misappropriated her employer’s funds.

5 4.19 Hibbler’s title varies but she has been known as the Director of Operations,
6 Operations Manager, Chief Operating Officer, and simply manager. Regardless of her title,
7 Hibbler is responsible for personnel, payroll, bookkeeping, office management, and management
8 of the four transitional homes, as well as other miscellaneous tasks. She maintains the office and
9 warehouse and keeps the checkbook and account information in her locked office. Since joining
10 VIEW, Hibbler has been solely responsible for hiring, supervising, managing, and paying
11 employees. Hibbler is compensated by VIEW in the amount of \$5,000 per month (\$60,000 per
12 year) and is paid twice monthly.

13 4.20 VIEW has suffered tremendously under Hibbler’s management.

14 4.21 On information and belief, sometime in 2016, VIEW defaulted on a loan it took
15 out from South Sound Bank in the amount of \$540,000. The loan was secured by a parcel of real
16 property in King County and resulted in a lien on the VIEW Real Properties subject to the HAP
17 Contract. The loan was made without permission from the Department of Commerce as required
18 under the HAP contract.

19 4.22 VIEW laid off its entire staff in February 2018 because it purportedly could not
20 pay its employees. Despite the layoff notice, VIEW asked its employees to “volunteer” their
21 labor. Many of VIEW’s employees were left with little choice given that they still lived in
22 VIEW’s transitional housing or were owed back pay for previous unpaid hours. VIEW
23

1 employees worked the entire month of March 2018 without pay and were “rehired” starting in
2 April.

3 4.23 On June 28, 2018, at Hibbler’s urging, VIEW executed a Promissory Note in the
4 amount of \$308,000, in connection with a loan from American Capital Funding Corporation (the
5 “ACFC Loan”). To secure the ACFC Loan, VIEW granted a deed of trust to one of the VIEW
6 Real Properties, commonly known as 4320 N. 27th Street, Tacoma, WA (the “27th Street
7 Property”). This deed of trust to the 27th Street Property was granted, again, without permission
8 and contrary to the terms of the HAP Contract. Ostensibly, this loan was to be used for needed
9 repairs and improvements on the houses. In connection with the ACFC Loan, Hibbler contacted
10 Commerce to request that it subordinate its lien position on the 27th Street Property to the ACFC
11 Loan obligation. The Department replied that it would not subordinate without additional
12 information about how the loan proceeds would be used. Though it is somewhat unclear how it
13 was accomplished, Hibbler convinced the lender and the title insurance company that the
14 Department would subordinate, and the loan funded. It was only after the loan disbursed and the
15 lender went to record its security that it learned the Department had not subordinated. As a
16 consequence, the title insurance company paid the Department of Commerce for a fourth of the
17 loan value and the Department released its lien. Notably, this payment did not release VIEW
18 from its contractual obligations.

19 4.24 On information and belief, the proceeds of the June 28, 2018, loan were not used
20 to make repairs or improvements to VIEW properties.

21 4.25 In 2018, VIEW was evicted from the Fife Workshop. In that instance, Hutt and
22 Peterson renewed a lease under new payment terms without consulting with Hibbler. Hibbler,
23

1 unhappy with the terms of the lease, stopped paying rent on VIEW's behalf. The result was an
2 eviction from their long-term workshop and office space and a \$60,487.96 judgment. The
3 eviction forced VIEW to move into its current, much smaller location, at 6919 24th Street W,
4 University Place, in October 2018.

5 4.26 In July 2019 VIEW granted a deed of trust to Hibbler in the amount of \$200,000
6 secured by the four VIEW Real Properties. At the time, there were only three members of the
7 board and Hibbler was one of them. The details of this transaction are opaque at best and the
8 transaction was, yet again, not approved by the Department of Commerce as required under the
9 HAP Contract.

10 4.27 Since arriving at VIEW, Hibbler has used her managerial authority to
11 misappropriate thousands of dollars for her own benefit. Hibbler's misappropriation includes,
12 but is not limited to, the following:

- 13 a. In 2015 Hibbler forged the signature of Edward Lang and Don Hutt on four
14 checks made out to her and "S.S.T.H." S.S.T.H. are the initials of Sober Solutions
15 Transitional Housing, a company Hibbler owned and operated at the time.¹
- 16 b. Hibbler repeatedly caused VIEW to issue her paychecks more frequently than
17 twice monthly.
- 18 c. In 2017 and 2018, Hibbler used VIEW funds to pay her personal IRS debts.

24 ¹ Hibbler's Sober Solutions Transitional Housing should not be confused with Hibbler's former
25 employer, Sober Solutions Transitional Housing. When SSTH terminated her employment, Hibbler trademarked
26 the name "Sober Solutions Transitional Housing" and started operating a business under that name. The owners of
the original SSTH had to sue Hibbler to get her to stop using the name. As a result of the suit, Hibbler changed the
name of her business to N-Side Out.

- d. Also in 2017 and 2018, Hibbler paid her personal criminal defense attorney using VIEW funds.
- e. Between May 2018 and April 2019, Hibbler withdrew more than \$26,000 from VIEW accounts using ATMs located in area casinos. Records indicate she gambled \$190,476 and lost more than \$108,000 in area casinos in 2018.
- f. On or about October 4, 2018, Hibbler was arrested on a King County arrest warrant in Cause Number 15-2-15975-5 KNT. From jail, Hibbler called VIEW employee Rosa Remedios and instructed her to bail her out using VIEW funds.
- g. Between October 2018 and March 2019, Hibbler used more than \$11,000 of VIEW's funds to pay rent and late fees for her own residence.
- h. Between 2018 and 2019, Hibbler endorsed a significant number of checks from VIEW made out to "Cash" totaling more than \$166,000 and there is no accounting for the use of the funds.
- i. Using funds from VIEW's checking account, Hibbler paid her own personal expenses like DirecTV.
- j. On information and belief, Hibbler used VIEW's bank's website to transfer thousands of dollars from the VIEW checking account directly to her personal bank account without authorization from the board of directors.

4.28 Hutt and Peterson knew or should have known that Hibbler was using VIEW's funds for her own personal benefit. They both received numerous warnings and ample information from many sources about Hibbler's conduct. Despite the warnings, Hutt and Peterson left Hibbler in charge of VIEW's finances without modifying her job description,

1 duties, or authority. On information and belief, they even left her with signed blank checks.
2 Moreover, as of the filing of this complaint, Hibbler remains a board member and the Director
3 of Operations.

4 4.29 The Board of Directors has grossly mismanaged VIEW leading to serious and
5 potentially unrecoverable damage to the nonprofit. Examples of the Board's mismanagement
6 include, but are not limited to:

- 7 a. Failing to observe corporate formalities like having the correct number of Board
8 members, holding regular Board meetings, keeping records of actions of the
9 Board, and holding elections for officers;
- 10 b. Failing to regularly review VIEW's financial records like bank statements and
11 related canceled checks, accounts receivable, and accounts payable;
- 12 c. Failing to make reasonable inquiry into the purpose(s) of checks drawn on VIEW
13 checking accounts;
- 14 d. Failing to create and maintain an operating budget;
- 15 e. Improperly – and without the requisite number of directors – agreeing to take on
16 large loans that encumber VIEW's properties;
- 17 f. Failing to consistently file required reports with government organizations. For
18 example, VIEW has been administratively dissolved by the Secretary of State's
19 office three times since 2005 for failing to file the required annual reports. The
20 Internal Revenue Service revoked VIEW's tax exempt status at least once for
21 failing to file its IRS 990 tax forms during three consecutive years; and

1 g. Failing to maintain payroll leading to multiple legal actions against it for unpaid
2 wages.

3 4.30 VIEW solicits charitable contributions as that term is defined by the CSA, RCW
4 19.09.020. Its website, www.veteransworkshop.org, features a “donate” page
5 (www.veteransworkshop.org/donate) where it misleads potential donors into believing they
6 would be donating to a charity that primarily helps veterans. They are told, “We make every
7 effort to support Veterans until they reach a point of self-sufficiency ... Your support and
8 contributions will enable us to meet our goals and improve conditions.” VIEW also asserts that
9 “We remain the only 100% Veteran focused Work Opportunity Center in Washington State.”
10 The statements are false and misleading. VIEW’s website also claims it provides “clinical
11 services” and “supportive community services.” VIEW does not provide these services.
12

13 **C. VIEW’s Financial Situation is Dire.**

14 4.31 In more recent months, the Board’s gross neglect and Hibbler’s purposeful
15 misconduct has led to crisis.

16 4.32 Over the years since VIEW purchased the VIEW Real Properties subject to the
17 HAP Contract, these residential real properties have fallen into a state of disrepair. The houses
18 show signs of structural damage, rot, mold, and water damage. Plumbing problems persist and
19 have only been remediated with duct tape. Necessary roofing repairs have not been made (despite
20 loans taken out and earmarked for that purpose).

21 4.33 Even after moving its operations to the University Place location, VIEW has not
22 paid rent consistently. In February 2019 its landlord sued alleging VIEW had not paid rent since
23 it moved into the building. In June, the parties settled, VIEW paid a lump-sum payment to its
24

1 landlord, and VIEW was allowed to remain. But immediately following the settlement, VIEW
2 again stopped paying rent and, as of the filing of this complaint, has not resumed. The landlord
3 initiated eviction proceedings in October alleging VIEW owes more than \$39,000 in rent and
4 another \$1,400 in unpaid utilities. These amounts remain unpaid and increase as another month
5 has gone by without a rent payment.

6
7 4.34 In addition to not paying its landlord, VIEW has not made any payments due
8 under the ACFC Loan. As a result, American Capital Funding commenced judicial foreclosure
9 of the pledged real property collateral on November 5, 2019. VIEW now faces the real possibility
10 of losing one of its VIEW Real Properties, which will force the eviction of its residents.

11
12 4.35 VIEW also faces a class action lawsuit filed by former and current employees
13 alleging nonpayment or late payment of wages. On Friday, November 15, 2019, the Court in that
14 action preliminarily accepted a settlement in which VIEW agreed to pay \$150,000 to the class.

15
16 4.36 On information and belief, current employees are going without pay having
missed as many as four pay periods in a row.

17
18 4.37 VIEW recently failed to respond to a lawsuit filed by a temporary employment
agency that alleged it had not been paid for work it provided VIEW. As a result, the record
19 indicates the Court entered a \$36,786.93 default judgment against VIEW.

20
21 4.38 Despite VIEW's stated purpose, and the agreement it made with the Department
22 of Commerce, VIEW does not lease its 17 residential units to veterans. In fact, as of the filing of
23 this complaint, VIEW had only four veterans as residents. VIEW has also borrowed against the
24 VIEW Real Properties without first obtaining permission from the Department of Commerce.
25 As a result, VIEW also faces a possible lawsuit seeking contract remedies.

4.39 Potentially most critically, VIEW's contract partners, who provide nearly all of VIEW's income and fund its employees' jobs, have stopped working with the previously thriving organization. Perhaps one of its contract partners remains.

V. FIRST CAUSE OF ACTION
(Failure to Properly Administer a Charitable Trust)
(Against All Defendants)

5.1 Plaintiff re-alleges Paragraphs 1.1 through 4.39 and incorporates them as if set fully herein.

5.2 A nonprofit corporation holding assets that are subject to limitations allowing them to be used only for charitable, eleemosynary, benevolent, educational, or similar purposes is a charitable trust for purposes of the Charitable Trust Act. RCW 11.110.020.

5.3 VIEW is a nonprofit corporation and holds assets subject to limitations that they be used “to offer Veterans life-changing opportunities through transitional housing and work, life skills and diverse support services.” This is a charitable purpose.

5.4 VIEW has not properly administered its assets. Rather, much of the corporation's assets have been wasted and diverted to the private benefit of Hibbler.

5.5 VIEW's mismanagement and neglect of its real property has resulted in waste.

5.6 Under RCW 11.110.120, the Court should intervene and make necessary orders to secure the proper administration of VIEW

**VI. SECOND CAUSE OF ACTION
(Breach of Duties to a Charitable Trust)
(as to Defendant VIEW)**

6.1. Plaintiff re-alleges Paragraphs 1.1 through 5.6 and incorporates them as if set forth fully herein.

1 6.2. Because it is a nonprofit corporation holding assets meant for charitable purposes,
2 VIEW is a trustee of a charitable trust as defined by RCW 11.110.020.

3 6.3. Trustees of charitable trusts owe duties of good faith, care, loyalty, and integrity
4 to the charitable trust. Trustees also owe an additional duty to keep and render clear and accurate
5 accounts with respect to the administration of the trust, and furnish complete and accurate
6 information as to the nature and amount of the trust property (generally referred to as its "Duty
7 to Account").

8 6.4. VIEW breached its fiduciary duties of good faith, care, loyalty, and integrity by,
9 among other things:

10

- 11 a. Using, or allowing to be used, the assets of the corporation for purposes other than
- 12 the charitable purposes for which the corporation was organized;
- 13 b. Engaging in self-dealing;
- 14 c. Allowing its assets to be wasted; and
- 15 d. Failing to comply with terms of the HAP Contract.

16 5.7. VIEW breached its duty to account by:

- 17 a. Operating without a budget;
- 18 b. Failing to file required tax forms with the IRS; and
- 19 c. Failing to track cash expenditures.

20 6.5. The corpus of the trust property suffered damages in an amount unknown at the
21 time of filing.

22 6.6. VIEW's breaches of its duties as a trustee was the proximate cause of the damage.

**VII. THIRD CAUSE OF ACTION
(Breach of Duties to A Nonprofit Corporation)
(as to Defendant Hibbler)**

7.1 Plaintiff re-alleges Paragraphs 1.1 through 6.6 and incorporates them as if set fully herein.

7.2 Defendant Hibbler was, at all times relevant to this complaint, a director and/or officer of the corporation.

7.3 Directors and officers of nonprofit corporations owe fiduciary duties to the corporation including a duty to act in good faith and “with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.” RCW 24.03.127; *Waltz v. Tanger Estates Homeowner’s Ass’n*, 183 Wn. App. 85, 88, 332 P.3d 1133 (2014).

7.4 Defendant Hibbler breached her fiduciary duties to VIEW by engaging in the conduct described above.

7.5 Defendant Hibbler's actions were intentional, reckless, and/or grossly negligent.

7.6 Defendant Hibbler's intentional, reckless, and/or grossly negligent conduct breached her fiduciary duties and damaged VIEW.

**VIII. FOURTH CAUSE OF ACTION
(Breach of Duties to a Nonprofit Corporation)
(as to Defendants Hutt and Peterson)**

8.1 Plaintiff re-alleges Paragraphs 1.1 through 7.6 and incorporates them as if set fully herein.

8.2 Defendants Hutt and Peterson were, at all times relevant to this complaint, directors and/or officers of the nonprofit corporation VIFW

1 8.3 Directors and officers of nonprofit corporations owe fiduciary duties to the
2 corporation including a duty to act in good faith and “with such care, including reasonable inquiry,
3 as an ordinarily prudent person in a like position would use under similar circumstances.” RCW
4 24.03.127.

5 8.4 Defendants Hutt and Peterson breached their fiduciary duties to VIEW by engaging
6 grossly negligent conduct including, but not limited to, the following:

- 8 a. Hiring and continuing to employ Defendant Hibbler as the financial manager and
9 bookkeeper for VIEW despite knowing, having reason to know, or negligently
10 failing to learn that she had:
 - 11 i. Previously been convicted of and incarcerated for criminal offenses
12 including at least 10 counts of felony theft and forgery.
 - 13 ii. Filed for bankruptcy protection twice;
 - 14 iii. Had multiple civil judgments entered against her; and
 - 15 iv. Recently had her employment at a different nonprofit terminated amid
16 accusations of embezzlement and misappropriation of funds.
- 17 b. Failing to adequately supervise Defendant Hibbler and permitting her to remain
18 responsible for the corporation’s finances even after:
 - 19 i. They learned of a 2015 criminal investigation by the Fife Police Department
20 into allegations that Hibbler forged checks;
 - 21 ii. Former employees sued VIEW and Hibbler for violations of Washington’s
22 Minimum Wage Act (RCW 49.46), Wage Payment Act (RCW 49.48), and
23 Wage Rebate Act (RCW 49.52);

- iii. They were informed of some of Hibbler's misconduct by state officials; and
- iv. Three investigative reports from King 5 News outlined Hibbler's wrong doing.

c. Failing to observe corporate formalities;

d. Failing to exercise appropriate financial controls; and

e. Failing to maintain the transitional VIEW Real Properties subject to the HAP Contract, leading to waste of nonprofit assets.

8.5 Defendants Hutt's and Peterson's breach of their duties as directors of VIEW constitutes, at least, gross negligence.

8.6 Defendants Hutt's and Peterson's grossly negligent breach of their duties as directors damaged VIEW.

8.7 Defendant Hutt's and Peterson's grossly negligent breach of their duties as directors was a proximate cause of the damages suffered by VIEW.

IX. FIFTH CAUSE OF ACTION (Ultra Vires)

9.1 Plaintiff re-alleges Paragraphs 1.1 through 8.7 and incorporates them as if set fully herein.

9.2 A corporation's authority to act is limited to that which is authorized by law.

9.3 Actions taken by a corporation in violation of its governing documents are taken without lawful authority (*ultra vires*).

9.4 *Ultra vires* actions by a corporation are void.

9.5 VIEW's governing documents require at least six directors on the board of directors.

9.6 VIEW's governing documents require decisions be made by a quorum of directors, which is defined by at least half of the directors.

9.7 VIEW has acted, and is acting, without at least six directors and without a quorum since at least 2016.

9.8 Per RCW 24.03.040, VIEW's acts and its conveyances of real or personal property since at least 2016, are *ultra vires* and void.

**X. SIXTH CAUSE OF ACTION
(Petition to Dissolve Defendant VIEW)**

10.1 Plaintiff re-alleges Paragraphs 1.1 through 9.8 and incorporates them as if set fully herein.

10.2 Hibbler, Hutt, and Peterson were, at all relevant times, directors and/or officers of VIEW, a nonprofit corporation.

10.3 While serving as a director of VIEW, Hibbler engaged in fraudulent and/or dishonest conduct with respect to the corporation, which included but was not limited to, the conduct alleged above.

10.4. The directors and/or those in control of VIEW have acted, are acting, or will act in a manner that is illegal, oppressive, and/or fraudulent.

10.5 VIEW has insufficient assets to continue its activities and it is no longer able to assemble a quorum of directors or members.

10.6 As a result of Hibbler's actions and the gross negligence of Hutt and Peterson, VIEW's assets are being misapplied and/or wasted.

10.7 VIEW has continued to exceed or abuse the authority conferred upon it by law. Under RCW 24.03.250 and RCW 24.03.271, this Court should enter a Decree of Dissolution involuntarily dissolving VIEW.

**XI. SEVENTH CAUSE OF ACTION
(Violations of the Charitable Solicitations Act)**

11.1 Plaintiff re-alleges Paragraphs 1.1 through 10.7 and incorporates them as if set fully herein.

11.2 Defendants made false, misleading, and deceptive statements in charitable solicitations for VIEW. Such misrepresentations include, but are not limited to claims that VIEW is a “100% Veteran focused Work Opportunity Center” and that it provides supportive community and clinical services to veteran clients.

11.3 VIEW's representations create the deceptive net impression that it primarily serves Veterans when, in reality, the majority of its renters and employees are not veterans. They also create the deceptive net impression that VIEW uses its assets mostly or exclusively to perform charitable work instead of enriching its director(s).

11.4 Practices covered by Charitable Solicitations Act “are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.” RCW 19.09.340.

11.5 The conduct described in paragraphs 11.1 through 11.4 violates RCW 19.09.100(15) as currently and previously enacted. Pursuant to RCW 19.09.340, violations of the Charitable Solicitations Act are *per se* violations of the Consumer Protection Act, RCW 19.86.

**XII. SEVENTH CAUSE OF ACTION
(Appointment of Receiver)**

12.1 Plaintiff re-alleges Paragraphs 1.1 through 11.5 and incorporates them as if set fully herein.

12.2 During the pendency of this action, the appointment of a general receiver is necessary to take charge of VIEW on the basis that it is not generally paying its debts as those debts become due and is in imminent danger of insolvency.

12.3 Additionally, appointment of a receiver is reasonably necessary to protect the property of VIEW, its business and other interests.

12.4 The AGO is entitled to appointment of a general receiver pursuant to RCW 7.60.025(1)(i), (t), (u), (ll), and (nn) and RCW 24.03.271.

XIII. PRAYER FOR RELIEF

Therefore, the State requests the following relief:

13.1 That the Court adjudge and decree the following:

- a. That the defendants engaged in the conduct complained of herein.
- b. That VIEW is a trustee of a charitable trust and, thus, owes duties of good faith, due care, loyalty, and integrity to the charitable trust. Further, that, as a trustee, VIEW has a duty to keep and render clear and accurate accounts with respect to the administration of a trust, and furnish complete and accurate information as to the nature and amount of the trust property.
- c. That, as a trustee, VIEW breached its duties to a charitable trust and, therefore, is liable for, at a minimum, the greater of: (a) the amount required to restore the value of the trust property and trust distributions to what they

would have been had the breach not occurred; or (b) the profit the trustee made by reason of the breach. RCW 11.98.085.

- d. That defendants Hibbler, Hutt, and Peterson are or were directors of VIEW and, thus, owed duties to act “in good faith” and “with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.” RCW 24.03.127.
- e. That defendants Hibbler’s, Hutt’s, and Peterson’s conduct as members of the Board of Directors was, at a minimum, grossly negligent in the exercise of their duties to VIEW.
- f. That defendants Hibbler’s, Hutt’s, and Peterson’s gross negligence was the proximate cause of VIEW’s breach of its duty as a trustee of a charitable trust.
- g. That defendants Hibbler, Hutt, and Peterson are personally liable for the damage caused to VIEW’s charitable trust.
- h. That the conduct complained of constitutes violations of the Charitable Solicitations Act, RCW 19.09, which are *per se* violations of the Consumer Protection Act, RCW 19.86.
- i. That the conduct complained of constitutes unfair and/or deceptive acts or practices and an unfair method of competition and is unlawful in violation of the Consumer Protection Act, RCW 19.86.020.

- j. That defendants Hibbler, Hutt, and Peterson participated in or, with knowledge, approved of the conduct that violates the Charitable Solicitations and Consumer Protection acts.
- k. That defendants Hibbler, Hutt, and Peterson are personally liable for the violations of the Charitable Solicitations and Consumer Protection acts.
- l. That the director(s) and those in control of VIEW have acted, are acting, and will continue to act in a manner that is illegal, oppressive, and/or fraudulent. RCW 24.03.250.
- m. That the assets of VIEW are being misapplied or wasted. RCW 24.03.250.
- n. That VIEW's actions undertaken without legal authority are *ultra vires* and void.

13.2 That the Court issue temporary, preliminary, and permanent injunctions enjoining and restraining the defendants, and their representatives, successors, assigns, officers, agents, servants, employees, and all other persons acting or claiming to act for, on behalf of, or in active concert or participation with the defendants, from continuing or engaging in the unlawful conduct complained of herein; and other injunctive relief as deemed appropriate.

13.3 That pursuant to The Charitable Trust Act, RCW 10.110, the Court make such orders as it deems necessary to secure the proper administration of the charitable trust.

13.4 That the Court remove Defendants Hibbler, Hutt, and Peterson from VIEW's board of directors and prohibit them from serving in a fiduciary role for VIEW in perpetuity.

13.5 That the Court appoint a general receiver over VIEW and its assets.

1 13.6 That the Court issue temporary, preliminary, and permanent injunctions enjoining
2 and restraining Defendants Hibbler, Hutt, and Peterson from registering, operating, or being a
3 fiduciary of any nonprofit corporation or charitable organization and from supervising, arranging,
4 offering to engage or engaging in charitable solicitation of any kind.
5

6 13.7 That the Court order the defendants to reimburse the VIEW charitable trust the
7 amount required to restore the value of the trust property and trust distributions to what they would
8 have been had the breach not occurred.

9 13.8 That the Court assess civil penalties, pursuant to RCW 19.86.140 and/or RCW
10 19.09.340, of up to two thousand dollars (\$2,000) per violation against the defendants for each and
11 every violation of RCW 19.86.020 demonstrated by the evidence.
12

13 13.9 That the Court order defendants Hibbler, Hutt, and Peterson are liable to VIEW for
14 all damages proximately caused by their intentional, reckless and/or grossly negligent conduct.

15 13.10 That, should it be deemed just and necessary, the Court order the dissolution of
16 VIEW and direct that its assets be distributed to an organization or organizations recognized as
17 exempt under Section 501(c)(3) of the Internal Revenue Code to be used exclusively to accomplish
18 the purpose for which VIEW was organized.
19

20 13.11 That the Court order that Hibbler, Hutt, and Peterson are joint and severally liable
21 for the amount of any loan made by VIEW to any director or officer of VIEW until such time as
22 the loan(s) are repaid in full. RCW 24.03.140.
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1 13.12 For such other relief as the Court may deem just and proper.
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5 DATED this 18th day of November, 2019.
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9 ROBERT W. FERGUSON
10 Attorney General
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